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The Vietnam-U.S. Textile Agreement

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In December 2001, the United States granted Vietnam most-favored-nation status, a key condition of the U.S.-Vietnam Bilateral Trade Agreement (BTA) that was approved by Congress and signed by President Bush earlier in the year. Since the BTA went into effect, U.S. imports from Vietnam have more than doubled. Most of this increase is due to the sharp rise in clothing imports, which increased to almost \$900 million in 2002, nearly twenty times the \$45-\$50 million range that Vietnam had recorded in 2000 and 2001. By dollar value, clothing is now the largest import item from Vietnam. In 2002, Vietnam accounted for less than 1.5% of U.S. textile and apparel imports, while about one-third of Vietnam's textile and apparel exports went to the U.S. market.

During the congressional debate over the BTA, many Members urged the Bush Administration to negotiate a bilateral textile agreement soon after the BTA came into effect. On April 25, 2003, the United States and Vietnam completed nearly three weeks of intense negotiations by signing a bilateral textile agreement that places quotas on 38 categories of clothing imports from Vietnam, including cotton pants and cotton knit shirts/blouses, the two most important items. The deal was reached after the U.S. side threatened to unilaterally impose more restrictive quotas if the Vietnamese did not agree to U.S. demands. Additionally, the talks were nearly derailed by an April 2003 finding by the U.S. Customs Service charging that some apparel imports labeled as Vietnamese were actually produced in China. On labor rights, the agreement calls for Vietnam to reaffirm its commitments to and cooperate with the International Labor Organization, and to continue its bilateral programs with the U.S. Labor Department. These provisions are far less detailed and comprehensive than the labor provisions included in the U.S.-Cambodia textile agreement and the U.S.-Jordan Free Trade Agreements, which several Members of Congress had suggested as models for a U.S.-Vietnam textile agreement.

This report analyzes the bilateral textile agreement, U.S.-Vietnam trade in textiles and apparel, the arguments that have been raised for and against a textile agreement, and the debate surrounding a proposed labor provision. This report will be updated periodically. For further information on U.S.-Vietnam relations and the BTA, see the following CRS products: CRS Issue Brief IB98033, *The Vietnam-U.S. Normalization Process*, by Mark Manyin; CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark Manyin. Further information on textile and apparel issues is available in CRS Report RL31723, *Textile and Apparel Trade Issues*, by Bernard A. Gelb. The authors would like to thank former CRS analyst Nikki Sayres, who wrote the original version of this report.

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The Vietnam-U.S. Textile Agreement

Background on the Normalization of U.S.-Vietnam Trade Relations

U.S.-Vietnam economic and diplomatic relations virtually ceased after the 1975 victory of communist North Vietnam over U.S.-backed South Vietnam. In addition to suspending most-favored-nation (MFN, also known as normal trade relations [NTR]) status to unified Vietnam, the United States imposed a trade embargo, ceased bilateral humanitarian aid, opposed financial assistance from international financial institutions, and banned U.S. travel to Vietnam.¹

In February 1994, President Clinton took a major step towards normalizing relations when he lifted the 19-year old trade embargo. Diplomatic relations with Vietnam resumed the following year, and the first post-Vietnam War U.S. ambassador to Vietnam was approved in 1997. In 1998 President Clinton granted Vietnam a waiver of the Jackson-Vanik amendment's freedom-of-emigration requirements, a step which opened the way for the Overseas Private Investment Corporation (OPIC) and the U.S. Export-Import Bank (Ex-Im Bank) to support U.S. trade and investment in Vietnam.² Following this waiver and the subsequent presidential waivers granted in 1999, 2000, and 2001, joint congressional resolutions of disapproval were introduced but defeated in the House. In these cases, opposition to the waiver had been based on concerns over Vietnam's emigration policy, restrictions on human and religious rights, and lack of appropriate accounting for POWs and MIAs.

¹ Legislation was enacted in 1998 to replace the term "most-favored-nation" with the term "normal trade relations" (NTR) in existing and future legislation. The former term is used here for historical continuity and because of its continued use in international trade relations, including in the U.S.-Vietnam Bilateral Trade Agreement. For additional information, see CRS Issue Brief IB93107, *Most-Favored-Nation (Normal-Trade-Relations) Policy of the United States*, by Vladimir N. Pregelj.

² The so-called Jackson-Vanik amendment, which is contained in the Trade Act of 1974, Title IV, section 402, prohibits the President from normalizing trade relations with selected non-market economy (NME) countries if they do not meet certain requirements regarding freedom of emigration. A presidential waiver of the Jackson-Vanik requirements — or, alternatively, a presidential determination that the NME country complies with the freedom-of-emigration requirements — gives that country access to certain specific economic benefits, such as access to U.S. government financial facilities (export credits, export credit guarantees, and investment guarantees) and the ability to conclude a bilateral trade agreement with the U.S. For more information, see CRS Report 98-545, *The Jackson-Vanik Amendment: A Survey*, by Vladimir N. Pregelj.

On July 13, 2000, the U.S. and Vietnam signed a sweeping bilateral trade agreement (BTA), marking a historic moment in the normalization of economic relations.³ The BTA, which entered into force on December 10, 2001, restored reciprocal MFN status and commits Vietnam to undertake a broad range of market-oriented reforms.⁴ Vietnam's temporary MFN status reduced U.S. tariffs on Vietnamese goods from an average of 40 % to about 3%.⁵

This tariff reduction has led to a sharp rise in U.S.-Vietnam trade, which in 2002 was worth over \$2.9 billion, more than double the value in 2001. Most of the \$1.4 billion increase in imports from Vietnam came from a sharp rise in clothing imports, which increased to almost \$900 million, nearly twenty times the \$45-\$50 million range that Vietnam had recorded in 2000 and 2001. (See **Table 1.**) By dollar value, clothing is now the largest import item from Vietnam. In 2002, Vietnam accounted for less than 1.5% of U.S. textile and apparel imports, while about 33% of Vietnam's textile and apparel exports went to the U.S. market. The marked increase in clothing imports added to pressure on the Bush Administration to negotiate a bilateral textile deal with Hanoi, which had tried to delay the start of the talks.

Table 1. U.S. Apparel Imports from Vietnam
(millions of dollars)

Product Category	HTS Category	1999	2000	2001	2002
Knitted apparel	61	11.24	16.75	21.32	435.76
Non-knitted apparel	62	25.15	29.92	26.04	437.13
Headgear	65	0.06	0.13	0.25	23.94
Total		36.45	46.80	47.61	896.83

Source: U.S. International Trade Commission. HTS is the Harmonized Tariff Schedule.

³ The text of the agreement, along with background documents, a separate Annex on Services, and two separate letters on investment, can be found on the website of the United States Trade Representative [<http://www.ustr.gov/regions/asia-pacific/regional.shtml>].

⁴ Although Presidential waivers of the Jackson-Vanik requirements had been issued for Vietnam since 1999, Vietnam did not receive MFN status until the Bilateral Trade Agreement came into effect in December 2001. Under the Jackson-Vanik amendment, two conditions must be met in order for NME countries to have their most-favored-nation status restored. First, the President must either (a) issue a determination that the country complies with the freedom-of-emigration requirements of the Jackson-Vanik amendment or (b) waive those requirements, as discussed in footnote 2. Second, the country must conclude a bilateral trade agreement with the U.S. that includes a reciprocal MFN clause. See CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*, by Vladimir N. Pregelj.

⁵ Vietnam's MFN status is temporary because it must be renewed on an annual basis. For additional information on Vietnam-U.S. relations and the BTA, see CRS Issue Brief IB98033, *The Vietnam-U.S. Normalization Process*, and CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, both by Mark Manyin.

The lowering of tariff rates faced by Vietnamese products appears to have accounted for at least a substantial portion of the increase in imports of Vietnamese clothing imports. Table 2 details five of the top garment imports from Vietnam in 2002, measured by import volume, and corresponding changes in U.S. tariff rates that resulted from Vietnam receiving MFN treatment after the BTA's entry into force.

Table 2. Selected Textile and Apparel Imports from Vietnam and Corresponding U.S. Tariff Rates
(millions of dollars)

Product Category	HTS Number	2000	2001	2002	Non-MFN Tariff Rate 2001	MFN Tariff Rate 2002	% Change
Women's/ Girls' Pullovers	6110202075	\$2.95	\$3.87	\$90.61	50%	17.3%	-65%
Men's/Boys' Pullovers	6110202065	\$2.55	\$3.44	\$49.35	50%	17.3%	-65%
Men's/Boys' Anoraks	6201933000	\$0.01	\$0.12	\$47.97	65%	7.2%	-89%
Women's Trousers	6204624020	\$0.05	\$0.04	\$39.79	90%	16.8%	-81%
Men's Shirts	6105100010	\$1.21	\$3.18	\$32.11	45%	20%	-56%

Source: U.S. International Trade Commission. HTS is the Harmonized Tariff Schedule. Most-favored-nation (MFN) tariff rates took effect for Vietnam December 10, 2001.

Congressional Interest in a U.S.-Vietnam Textile Agreement

Trade in textiles and clothing with Vietnam is of particular interest to Members of Congress with significant textile and clothing manufacturing in their districts, as well as Members representing major clothing retailers and importers. Additionally, several Members have been monitoring closely the general normalization of U.S.-Vietnam relations.

Congressional discussion regarding a textile agreement with Vietnam began during the debate over the BTA, which contains no provisions restricting textile and apparel imports from Vietnam. Some Members urged the Bush Administration to negotiate a separate bilateral textile agreement that would place quotas on imports

of Vietnamese textile and apparel products, due to concerns that such imports would significantly affect the U.S. textile and apparel industries.⁶

Although bilateral textile agreements do not require congressional approval, Congress can attempt to influence U.S. policy toward Vietnam generally through its role in reviewing Presidential waivers of the Jackson-Vanik trade restrictions on Vietnam. These waivers can be rejected through a joint disapproval resolution. On May 29, 2003, President Bush transmitted to Congress a renewal of the Jackson-Vanik waiver for Vietnam. In previous years, some Members of Congress have used its review of the Jackson-Vanik waiver as an opportunity to scrutinize Vietnam's record on human rights and labor rights. The U.S. State Department and human rights groups have reported that Vietnam's human rights situation worsened in 2002, particularly with regard to the treatment of ethnic minorities, unregistered religious groups, and individual citizens criticizing the government.⁷

Congress is also likely to focus on Vietnam's record in implementing its initial commitments under the BTA. Vietnam has reportedly taken steps to carry out nearly all of the reforms that were to be completed upon the BTA's entry into force.⁸ The question remains whether the government will be able to implement the longer-range reforms, given the opposition of powerful vested interests and the degree of cooperation required among governmental ministries and at the provincial level.

The International Textile and Apparel Trade Regime

From 1974 to 1995, the Multifiber Arrangement (MFA) provided the framework for international trade in textiles and apparel. The MFA was a set of rules governing bilateral agreements that applied quotas on imports into countries whose domestic industries were facing serious damage from a rapid surge of imports from developing countries. The MFA, in allowing importing countries to set different quota levels for individual exporting countries, conflicted with the then General Agreement on Tariffs and Trade's (GATT) principle of equal treatment for trading partners and with its general preference for customs tariffs over quantitative restrictions.⁹

⁶ For a more recent call to include labor rights provisions in a textile agreement with Vietnam, see the prepared remarks by Rep. Sander Levin at the February 26, 2003 Ways & Means Trade Subcommittee Hearing on "The President's Trade Agenda."

⁷ See, for instance, State Department's Bureau of Democracy, Human Rights, and Labor *Vietnam Country Reports on Human Rights Practices - 2002*, March 31, 2003, [<http://www.state.gov/g/drl/rls/hrrpt/2002/18270.htm>], and Human Rights Watch, "Vietnam: New Documents Reveal Escalating Repression," April 2003, [<http://www.hrw.org/asia/vietnam.php>].

⁸ CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark Manyin.

⁹ In general, the WTO prohibits countries from taking actions that selectively target one or more specific Member countries. For further information on textile and apparel issues, see CRS Report RS20436, *Textile and Apparel Trade Issues*, by Bernard A. Gelb. Also, for background information on the WTO, see *Trading into the Future* on the WTO website at (continued...)

In 1995, the MFA was replaced by the Agreement on Textiles and Clothing (ATC), which was negotiated in the GATT's Uruguay Round of trade talks that established the World Trade Organization (WTO). The ATC is a transitional instrument designed to integrate textile and apparel trade into WTO rules governing other products by phasing out existing quotas over a ten-year transition period. The transition period, which allows manufacturers in industrial countries to prepare for increased competition from developing countries, ends on January 1, 2005, when all import quotas on textile and apparel products are to cease.

Vietnam's Bid to Join the WTO

Vietnam is currently not a WTO member and, therefore, not a party to the ATC. This puts Vietnam at a significant disadvantage in the international textile and apparel trade in two ways. First, Vietnam does not benefit from the current phase out of existing import quotas. Second, if Vietnam is not a WTO member by 2005, its trade in textiles and apparel will be limited by whatever existing quotas it faces. WTO members, on the other hand, will then operate under quota-free trade in textiles and apparel.

Vietnam's Prime Minister Phan Van Khai and other officials have set a WTO entry goal of 2005, which many analysts consider optimistic given the depth and breadth of reforms Vietnam will have to undertake to meet WTO requirements.¹⁰ The Vietnamese government has conducted several rounds of multilateral negotiations on WTO accession, and has commenced bilateral negotiations with various WTO member nations.

The Terms of the U.S.-Vietnam Textile Agreement¹¹

Formal negotiations on a textile deal began in early 2003 and intensified over the following weeks. In April, Vietnamese negotiators traveled to Washington, DC, and held nearly three weeks of talks with their American counterparts that culminated in the completion of an agreement on April 25, 2003. The deal was reached after the U.S. side threatened to unilaterally impose more restrictive quotas if the Vietnamese did not agree to an offer the U.S. put forward on April 18, 2003. Several U.S. negotiators reportedly believed that Vietnam was deliberately stalling in the negotiations, which apparently had reached an impasse, to increase the base levels of imports that are used to calculate quotas. To counter this, U.S. officials said that if Vietnam did not accept their offer by April 24, the quota levels would be based

⁹ (...continued)
[<http://www.wto.org>].

¹⁰ "Interview with Phan Van Khai," *Far Eastern Economic Review*, March 20, 2003.

¹¹ The Bush Administration and the Vietnamese government have yet to release the agreement. Material in this section is based upon a two-page "Vietnam-U.S. Textile Agreement Summary, available on the United States Trade Representative's (USTR) web site at [<http://www.ustr.gov/regions/asia-pacific/2003-04-25-Vietnam-textiles-summary.pdf>], and based upon articles in the May 2, 2003 edition of *Inside U.S. Trade*.

upon the level of imports from Vietnam through November 2002, not February 2003. Because imports of Vietnamese clothing spiked in late 2002 and early 2003, this would have left Vietnam with a much lower level of imports. Vietnam's negotiators accepted the U.S. ultimatum on April 22.

Quota Levels

The final agreement places quotas on 38 categories of clothing imports from Vietnam, based on Vietnam's exports for the year ending February 28, 2003. The most important and controversial items are cotton trousers and cotton knit shirts, for which Vietnam received 2003 quotas of 84 million and 168 million units, respectively.

The quotas will increase by 7% a year, except for the quotas of wool products, which will increase by 2% per year. The textile agreement allows Vietnam to adjust its annual quotas by "carrying over" (applying unused quotas from the previous year) by 11%, by "carrying forward" (borrowing a portion of the following year's quota) by 6%. For cotton trousers and cotton knit shirts and blouses, the carryforward provision is 8% annually. Also, Vietnam may make adjustments by taking up to 6% of one item's quota and giving it to another item in the same calendar year.

Enforcement

The agreement provides for both sides to cooperate on enforcement, including information-sharing and facilitating plant visits. Vietnam agreed to withhold visas from Vietnamese enterprises that do not cooperate with U.S. Customs authorities.

Circumvention/Transshipment. During the final round of talks, the U.S. Customs Service produced a finding that a textile shipment labeled as Vietnamese had actually been manufactured in China. If further investigation reveals this finding to be accurate, it would mean that the base level of imports from Vietnam — which was used to set the quotas — was inflated. In response, the negotiators agreed to a clause pledging to discuss adjusting the quotas if Customs' initial finding is borne out.

The agreement pledges both signatories to "investigate and punish" circumvention. If the United States has "clear evidence" of transshipment and is not satisfied with Vietnam's enforcement, it may reduce Vietnam's relevant quota by an amount up to the quantity that allegedly is transshipped. If the United States presents "clear evidence" of multiple cases of circumvention over a twelve-month period, it may could "triple charge" Vietnam by subtracting three times the amount allegedly transshipped from Vietnam's relevant quota.

U.S. Access to Vietnamese Market

In the bilateral textile agreement, Hanoi committed to set its textile and clothing tariffs at 7% for yarn, 12% for fabric, and 20% for apparel. Vietnam is a net importer of raw textile fabrics. Vietnam also agreed to eschew non-tariff barriers in the textile and clothing sector.

Labor Rights

The agreement calls for Vietnam to reaffirm its commitments to and cooperate with the International Labor Organization, and to continue its bilateral programs with the U.S. Labor Department. In November 2000, Vietnam's Labor Ministry and the U.S. Labor Department signed a Memorandum of Understanding (MOU) establishing six joint projects: skills training and employment services, unemployment insurance and pension systems, employment of the disabled, child labor, industrial relations, and HIV/AIDS workplace-based prevention. The agreement also commits the two countries' labor ministries to meet to "review progress toward the goal of improving working conditions" in Vietnam's textile sector. It is not clear from the USTR's summary of the agreement how often these meetings will take place, whether there will be a role for input from non-governmental actors, or what criteria — if any — will be used to evaluate working conditions.

These provisions are far less detailed and comprehensive than the labor provisions included in the U.S.-Cambodia textile agreement or the U.S.-Jordan Free Trade Agreement, which several Members of Congress had suggested as models for a U.S.-Vietnam agreement.

Duration of the Agreement

The bilateral textile agreement runs from May 1, 2003 to December 31, 2004, but it will automatically roll over for one year unless the two sides terminate or renegotiate it by December 1. Similarly, in subsequent years, the agreement will roll over for one year unless it is terminated or renegotiated. The agreement will expire if and when Vietnam enters the World Trade Organization (WTO). See the following section for a discussion of Vietnam's application for WTO membership.

U.S.-Vietnam Trade in Textiles and Apparel¹²

The U.S. Textile and Apparel Industries and Markets

Employment in the U.S. textile and garment industries has fallen markedly over the past two decades. In 2000, the U.S. textile and apparel industry employed 1.2 million people, 6.5% of total U.S. employment in manufacturing. This marked a 35% and 50% decline in employment in the textile and apparel industries, respectively, since 1980. This decrease in employment can largely be attributed to both productivity gains and increased imports of textile and apparel products. Over the same twenty-year period, U.S. production of textiles rose, while apparel production fell slightly.¹³

¹² This section was prepared by Amanda Douglas.

¹³ CRS Report RS20436, *Textile and Apparel Trade Issues*, by Bernard A. Gelb.

The United States is currently the world's largest import market for textile and apparel products.¹⁴ In 2002, the United States imported over \$78 billion in apparel and textiles, of which \$62 billion was apparel. During the same period, the United States exported \$16 billion worth of apparel and textiles worldwide, with \$6 billion in apparel and \$10 billion in non-apparel textiles.¹⁵

Vietnam's Textile and Apparel Industry¹⁶

Vietnam's textile and apparel industries are important sources of economic growth and employment for the country. They produce about 15% of Vietnam's exports and employ 1.6 million workers, approximately 25% of all industrial workers in the country. The sectors comprise over 1,000 enterprises — 190 state-owned, 800 private, and approximately 180 foreign-invested companies that include international joint ventures with domestic firms. Individual tailors and small enterprises currently serve much of the domestic garment market; therefore, most medium and large apparel enterprises focus on export production. The industry is dominated by VINATEX, a conglomerate of 60 state-owned enterprises that accounts for over one-third of all textile and garment exports.

The Vietnamese government and textile industry have taken several measures to expand both production and U.S. sales. The government is granting an export subsidy of 7% to textile companies that export to the United States.¹⁷ VINATEX opened a representative office in New York, sent several producers to the World Source Exhibition, and is building four specialized industrial parks.¹⁸ In addition, the government plans to invest \$100 million in the domestic cotton industry, with the goal of expanding production to meet 60% of domestic demand by 2010. Currently, Vietnam's domestic producers can only supply 10% of the cotton and 20% of the fabrics used in garment production.¹⁹ The present level of Vietnamese cotton production may benefit the United States, since raw cotton is one of its leading export items to Vietnam.

¹⁴ BBC Monitoring International Reports, "Vietnam's Textile Firms Improve Conditions for Workers," March 1, 2002.

¹⁵ Data from OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, available at [<http://otexa.ita.doc.gov>].

¹⁶ Much of the information from this section comes from reporting of the U.S. Embassy in Hanoi.

¹⁷ Vietnam News Briefs, January 7, 2002.

¹⁸ *Vietnam Investment Review*, "Get Ready for Ragtime," January 14, 2002; Xinhua News Agency, "Vietnam Takes Measures to Expand Textile, Garment Market," April 8, 2002.

¹⁹ U.S. and Foreign Commercial Service Market Research Reports, International Trade Administration, U.S. Department of Commerce, May 7, 2002; Reporting from the U.S. Embassy in Hanoi, March 15, 2002.

Controversy over the Textile Agreement

The terms of the U.S.-Vietnam bilateral textile agreement has been criticized by both those who in the past had favored and those who opposed beginning negotiations on an agreement. Proponents of negotiating an agreement argue that the final deal was overly generous to Vietnam and will lead to further job losses by U.S. clothing and textile workers. Opponents of negotiating an agreement contend that the final deal was too restrictive to Vietnam and to U.S. consumers.

Prior to the signing of the agreement, members of the U.S. apparel manufacturing industry called for a U.S.-Vietnam textile agreement to protect domestic producers against a potential surge of Vietnamese exports. With the view that Vietnam, with its low labor costs, most-favored-nation status, and unrestrained access to the U.S. market, is a threat to domestic production, they contended that the lack of a textile agreement could lead to increased job losses and factory closings in an industry already hard hit by the worldwide recession and trade benefits extended to other countries.²⁰

Domestic pressure for a textile agreement was further heightened by U.S. quota concessions granted to Pakistan in February 2002 — estimated at nearly \$500 million over three years — to help repay Pakistan for its help in the war against terrorism. At the time, sources in the textile industry asserted that such concessions would have a substantial impact on the U.S. textile industry and could cost as many as 2,500 jobs.²¹ In order to offset this negative impact on domestic industry, it has been suggested that quota space from another country be shifted to Pakistan. Prior to the opening of negotiations with Vietnam, some sources hinted that Vietnam was the most likely candidate to lose potential quota.²²

Once the agreement was finalized, however, several textile lobbying groups condemned it. On the day the agreement was signed, for instance, the American Textile Manufacturers Institute (ATMI), issued a statement labeling the quotas given Vietnam as “enormous,” calling special attention to “the largest quotas in history” that were granted for woven trousers and cotton knit shirts, “domestic industry’s most sensitive products.” The Institute also published a fact sheet alleging that U.S. negotiators made large increases to Vietnam between the time the formal negotiations began in February 2003 and the final agreement was signed. Finally, the ATMI criticized the Bush Administration for backtracking on pledges previously given to the domestic industry to push for reciprocal access for U.S. textile and apparel goods in future trade agreements.²³ Such a promise was critical in convincing some

²⁰ *Inside U.S. Trade*, “USTR Officials Visit Vietnam to Begin Talks on Textile Accord,” February 22, 2002.

²¹ *Inside U.S. Trade*, “White House Grants Pakistan Quota Concessions Worth Half a Billion,” February 15, 2002.

²² *Inside U.S. Trade*, February 15, 2002; Paul Wiseman and James Cox, “Competing Interests Tangle Textile Policy,” *USA Today*, April 2, 2002.

²³ “ATMI Condemns New Vietnam Bilateral Agreement - U.S. Government Breaks (continued...) ”

lawmakers representing textile-producing districts to support President's Bush request for trade promotion authority (also known as "fast track" authority) in December 2001.²⁴

Those opposed to negotiating a textile agreement with Vietnam argued that by restricting trade, any textile agreement would hurt American consumers, U.S. industries, and the textile industry itself. Limiting the amount of apparel goods available to U.S. consumers, in theory, would restrict choice and raise the cost to consumers of those goods, which in turn would reduce U.S. consumer spending on goods from other industries. Textile agreement opponents maintained that U.S. job losses would weaken U.S. consumers' purchasing power; also, it would limit Vietnamese export earnings, thereby reducing Vietnam's ability to buy U.S. goods. They asserted that textile quotas, in reducing the U.S. industry's competition from abroad, would discourage the industry from modernizing and improving productivity, leaving the industry more vulnerable to international competition after textile quotas expire under the ATC in 2005. They also contended that freer trade with Vietnam may also contribute to greater voice for the private sector in the economic and political affairs of that country.

Some opponents of a Vietnam textile agreement have asked whether Vietnam can truly be considered a threat. They have asserted that imports of Vietnamese textile and clothing products accounted for less than 1.5% of the \$78 billion in textile and apparel that the U.S. imported in 2002. Moreover, in order for Vietnam's production to be a true threat to U.S. domestic producers, it has to be shown that Vietnam's increased market share would come out of the market share of U.S. producers. Opponents contended that the more likely scenario is that increased imports from Vietnam displaces the market share of China or other developing country producers.²⁵

Opponents of a textile agreement also have argued that the imposition of quotas could discourage potential investment in Vietnam's textile industry. If Vietnam is subject to U.S. quotas and is not a WTO member by 2005, the country would be at a significant disadvantage against WTO competitors who will enjoy quota-free trade in textiles and apparel. Opponents have noted that potential investors eyeing a post-BTA Vietnam may choose not to risk being stranded in an industry that cannot compete well in the world market after 2005. Another argument made against setting quotas on Vietnam was that U.S. producers of raw cotton, one of the United States' leading export items to the Vietnam, would benefit from expansion of Vietnam's garment sector. Since the BTA was signed, U.S. cotton exports to Vietnam increased

²³ (...continued)

Promises to Industry and Workers," April 28, 2003 ATMI press release, [<http://www.atmi.org/>]. The ATMI fact sheet is available at [<http://www.atmi.org/TextileTrade/accord.asp>].

²⁴ For more on the trade promotion authority debate, see CRS Report RL31844, *Trade Promotion Authority: Background and Developments in the 107th Congress*, by Lenore Sek.

²⁵ See a December 3, 2002 letter to Ambassador Robert Zoellick signed by the presidents of the International Mass Retail Association, National Retail Federation, and the United States Association of Importers of Textiles and Apparel, [<http://www.usvtc.org/Textiles>].

somewhat, from over 112,000 kilograms in 2001 to a record 131,000 kg in 2002. Exports in the first quarter of 2003 exploded to over 11.8 million kg., nearly 100 times the volume exported in all of 2002.²⁶

Labor Rights

Accompanying initial discussion of a possible U.S. textile agreement with Vietnam has been the question of whether such an agreement should have a labor provision, possibly modeled after the U.S.-Cambodia textile agreement or the U.S.-Jordan Free Trade Agreement. This section will provide a brief background on the debate over labor provisions and explore some preliminary issues relative to Vietnam.

Background on Labor Provisions in Trade Agreements

Linking the promotion of labor standards to international trade policy is a highly controversial issue, both in the United States and internationally.²⁷ Within the broader debate about the effects of trade on labor standards and the impact of varying labor standards on trade competitiveness is the question of whether trade agreements should include legally-enforceable standards to protect worker rights. Labor rights proponents argue that the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS), which protects owner rights for seven types of intellectual property, sets a precedent for including legally-binding standards that protect the rights of resource holders in trade agreements. Some also ask whether it is morally acceptable for the United States to import items made under labor conditions that would be illegal if the production occurred in the United States. Proponents believe that a critical advantage of including a labor rights provision in the body of a trade agreement is that it allows for the use of the agreement's dispute settlement process to ensure that labor standards are enforced.

On the other hand, many argue that trade and labor issues should not be linked. Some economists point out that labor provisions inhibit free trade, thereby raising the prices and reducing the selection of imported goods. Other critics of the trade-labor linkage assert that requiring poor countries to meet industrial nations' standards simply serves to protect developed country industries from developing country competition and, in doing so, limits the developing country's potential economic growth through trade. Opponents of labor provisions maintain that, in the end, by

²⁶ Trade Dataweb, U.S. International Trade Commission. The HTS Codes 5201001090, 5201009000, and 5201001025 were used to generate this data.

²⁷ The labor standards outlined in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work are widely accepted as the international core labor standards: freedom of association and the right to bargain collectively, elimination of forced labor, abolition of child labor, and the elimination of discrimination in employment. The U.S. Trade Act of 1974, as amended by P.L. 98-573, contains the first three standards in its definition of worker rights; however, rather than non-discrimination in employment, its final standard is acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

restricting trade and imposing higher standards, provisions that are ostensibly designed to help workers may actually cause factories to close and workers in developing countries, who have few safety net resources and work alternatives, to lose their jobs.²⁸ The WTO, faced with strong debate on this issue in the 1996 Singapore Ministerial, declared that the International Labor Organization (ILO) was the appropriate organization for labor matters and refused to link these issues to its trade policies.²⁹

Two U.S. trade agreements that are considered possible models for linking trade and labor issues are the Cambodia-U.S. textile agreement and the Jordan Free Trade Agreement. The “Cambodia model” introduced an innovative, incentive-based labor provision that ties Cambodia’s improvements in labor standards to increased access to the U.S. market. Under the agreement, Cambodia is entitled to receive annual, one-time “bonus” increases in its quotas if a U.S. interagency panel determines that working conditions in the textile and apparel sector “substantially comply” with internationally recognized worker rights and Cambodian labor law.³⁰ The bonuses, which take effect for one year only, are in addition to the 6% increase that typically is automatically granted to textile import quotas. In the 1999 agreement, the amount of the potential quota bonus was up to 14%, and Cambodia received bonuses of 9% in 2000, 2001, and 2002.³¹ After the awarding of each bonus, the Cambodian government, American textile importers, and some labor rights organizations criticized the United States for not awarding the full 14% increase. In December 2001, the U.S.-Cambodia textile agreement was amended and extended for another three-year period, with the potential quota bonus raised to 18%.³² In order to gather information on conditions in the garment sector, the United States, Cambodia, and the Garment Manufacturers Association in Cambodia funded the establishment of an independent monitoring system operated by the ILO. The ILO program began

²⁸ For more information, see CRS Report RS20909, *Trade Agreements: A Pro/Con Analysis of Including Core Labor Standards*, by Gary Wells; and CRS Electronic Trade Briefing Book, “Worker Rights Protection in Trade Agreements and Fast Track Authority,” by Mary Jane Bolle.

²⁹ WTO, *Trading into the Future*. See also CRS Electronic Trade Briefing Book, “Labor Issues and the WTO,” by Mary Jane Bolle.

³⁰ The text of the Cambodia Bilateral Agreement is available on the website of the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, at [<http://web.ita.doc.gov/Otexa/>]

³¹ The 2000 bonus was parceled out over the year. In December 1999, the U.S. promised a 5% quota increase if Cambodia established an industry-monitoring program to be run by the ILO. After Cambodia complied with this request, it was awarded the 5% increase in May 2000. Five months later, the U.S. acknowledged further progress in Cambodia’s labor rights situation by awarding an additional 4% increase. *Inside U.S. Trade*, “CITA Awards Cambodia Nine Percent Quota Hike on Textiles, Apparel,” January 19, 2001.

³² Press release, USTR, “U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers’ Rights,” January 8, 2002, available at [<http://www.ustr.gov/releases/2002/01/01-03.htm>].

monitoring factories in June 2001 and has produced four synthesis reports on baseline conditions in 64 factories.³³

The Jordan-U.S. Free Trade Agreement, adopted into law in September 2001, represents the first U.S. free trade agreement to include labor provisions directly in the body of the agreement, where they would be subject to dispute resolution procedures. The labor provisions require each country to enforce its own labor laws and authorize sanctions for non-enforcement. However, controversy over the use of sanctions to enforce labor standards led to a last minute exchange of letters between Jordan and the U.S. agreeing to “make every effort to resolve [the disputes] without recourse to the formal dispute resolution procedures.”³⁴ Some Members of Congress have called on the Administration to include the “Jordan standard” in the areas of trade and labor in future trade agreements.³⁵

Possible Approaches Concerning a Vietnam Labor Provision

No New Labor Provisions. This essentially is the option adopted in the U.S.-Vietnam bilateral textile agreement, which calls for Vietnam to reaffirm its existing commitments to and cooperation with international and U.S. labor agencies. The agreement also commits the two countries’ labor ministries to meet to “review progress toward the goal of improving working conditions” in Vietnam’s textile sector.

Prior to the signing of the U.S.-Vietnam bilateral textile agreement, many argued that there was no need for a labor provision in any textile agreement, including one between the U.S. and Vietnam. In addition to the arguments mentioned above regarding the potential negative effects on workers and consumers, opponents of a labor provision contended that the BTA in itself will improve labor rights by promoting economic development, foreign investment, and the rule of law in Vietnam.³⁶

Other critics of a labor provision pointed out that Vietnam is already working with the United States to improve its labor situation. Under a Memorandum of Understanding (MOU) signed during former President Clinton’s visit to Vietnam in November 2000, the Vietnamese Ministry of Labor, Invalids, and Social Affairs (MOLISA) and the U.S. Department of Labor (USDOL) agreed to a program of technical cooperation in six areas: employment services, social insurance,

³³ The Synthesis Reports from the ILO Garment Sector Working Conditions Improvement Project are available on the ILO website at [<http://www.ilo.org/public/english/dialogue/ifpdial/publ/cambodia.htm>].

³⁴ CRS Report RL31178, *Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3019)*, by Mary Jane Bolle.

³⁵ *Inside U.S. Trade*, “Daschle, Baucus Warn Zoellick Against NAFTA Approach to Labor, Environment Provisions,” March 22, 2002.

³⁶ For further information on Vietnam’s labor situation, see CRS Report RL30896, *Vietnam’s Labor Rights Regime: An Assessment*, by Mark Manyin, Thomas Lum, Lois McHugh, Phuong-Khanh Nguyen, and Wendy Zeldin.

employment for people with disabilities, industrial relations and labor law, child labor, and HIV/AIDS workplace-based education. Some contend that through its labor cooperation with the U.S. prior to the BTA, its numerous labor programs with the ILO and other foreign governments, and its recent revision of the Labor Code, Vietnam has already demonstrated its commitment to improving labor standards. These critics concluded that a labor provision was not only unnecessary, but that it could potentially distort the current efforts to improve worker rights in Vietnam.

As discussed above, however, labor rights supporters viewed a labor provision both as leverage to level the competitive playing field and as insurance against the use of unfair or substandard labor practices to bolster exports.

MOU Plus. Another approach that was discussed prior to signing the agreement was supplementing the current U.S.-Vietnam labor cooperation program with an initiative tailored to the purpose of the labor provision. For example, if the goal of the labor provision were to improve conditions in the garment sector, efforts could have been targeted at building the capacity of the Vietnamese labor inspectorate to identify and enforce violations in that sector. This could also have entailed focusing attention on the garment industry through cooperation with the ILO. Such an approach would likely have been supported by those who argue that the improvements in Cambodia's garment sector are the result of the international attention focused on the industry, rather than the specific incentives of the U.S.-Cambodia textile agreement.

Jordan Standard. Some supporters of a labor provision have argued that, at a minimum, any textile agreement should have language similar to that in the U.S.-Jordan Free Trade Agreement that requires Vietnam to enforce its labor laws, which have been substantially reformed over the past decade. A step beyond that might have included dispute resolution procedures that would have provided a mechanism for the U.S. to legally enforce the labor provision. This would have given the United States economic recourse in the event that Vietnam lowered its labor standards. U.S. opponents of dispute resolution mechanisms that include labor standards in general argue that it opens the door to the imposition of trade sanctions for alleged violations, or lack of enforcement, of a country's own labor laws. Based on Vietnam's reaction to U.S. comments on its human rights situation, Vietnam would likely have viewed this approach as an unwarranted interference in its internal affairs.

Cambodia Model. Some suggested that a Vietnam textile agreement include a trade incentive provision modeled after the Cambodia textile agreement. Advocates of this provision pointed to numerous improvements in Cambodia's labor system as evidence of the model's effectiveness. For example, since the agreement began in 1999, Cambodia has established a tripartite Labor Advisory Committee, ratified 7 of the 8 ILO core conventions, and established new regulations on union representation for collective bargaining. In addition, the minimum wage in the garment sector has been raised, and the number of registered unions has risen from

20 in 1997 to 245 by January 2002. Approximately 218 of those unions are in the garment sector.³⁷

The Cambodia ILO monitoring system itself has also been praised for contributing to increased communication, trust, and understanding of Cambodian labor laws among unions, employers, and the government. Through a Project Advisory Committee, the monitoring program has provided a forum for the tripartite social partners to discuss labor issues related to the project. That committee also serves as an effective monitor of the monitoring program itself, since all three social partner groups review, and in some cases approve, activities under the project. Through factory visits and meetings with workers, the monitoring program has also increased awareness among factory management and employees about Cambodian labor laws.

Other supporters of the Cambodian model viewed it not only as a way to encourage governments to take action to improve labor conditions, but, more importantly, as a mechanism to empower workers. Because enterprises have to demonstrate good working conditions in order to receive quota bonuses under the agreement, it is in their interest to keep workers satisfied in order to minimize the incidence of complaints and disputes. This provides workers with an environment in which their issues are more likely to be addressed to their satisfaction and without reprisal from management.

Supporters of the Cambodia model emphasized that as labor conditions improved, through the incentive system, so did the economic benefits to Cambodia. Since the start of 1999, Cambodia has increased its garment and textile exports to the U.S. by roughly \$500-600 million, the number of garment factories has increased, and approximately 100,000 jobs have been created in the sector.³⁸ Some contend that the ILO's neutral review of labor conditions makes Cambodia's garment sector more attractive for buyers and retailers who are concerned about social responsibility. They also assert that by contributing to improved labor relations, the Cambodia model has enhanced political stability — another critical factor in economic growth. Thus, according to some, the Cambodia model proves that linking trade and labor can bring about the win-win results of economic growth and improved working conditions. In January 2002, U.S. Trade Representative Robert Zoellick called the Cambodia agreement “an excellent example of the way trade agreements lead to economic growth and promote a greater respect for workers’ rights.”³⁹

On the other hand, the Cambodia agreement has been criticized for several reasons. Some critics argue that focusing international attention and inspection resources on the garment sector distorts the equal protection of workers in other sectors. Although garment sector workers account for 50% of the industrial work

³⁷ Labor Trends Report 2002, U.S. Embassy in Cambodia, April 2002, available at [<http://usembassy.state.gov/cambodia>].

³⁸ Labor Trends Report 2002, U.S. Embassy in Cambodia; Data from the OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce.

³⁹ Office of the United States Trade Representative, Press Release, January 7, 2002.

force in Cambodia, they represent only 3% of the national work force.⁴⁰ Some question whether the United States should be promoting increased rights for workers in favored sectors only, and why the United States only examines conditions in one sector to determine whether Cambodia complies with international labor standards. These critics also point out that despite the increased international attention and Cambodia's efforts, there continue to be reports of child labor, forced overtime, and anti-union discrimination in the garment sector.

Other critics have called into question the effectiveness of the Cambodia incentive provision, citing the fact that most of Cambodia's apparel exports to the United States are not under quota. According to a private-sector source, Cambodia's unrestricted trade to the United States as of October 31, 2001 was almost two and a half times the volume of the trade under quota.⁴¹ Some observers suggest that leaving most textile and apparel trade unrestrained is a greater benefit to Cambodia than the bonus quota offered through the labor provision. Of the factories that do produce quota goods, there is the question of whether those in compliance with labor laws actually receive the bonus quota or more of the bonus quota than non-complying factories.⁴² If Cambodian garment factories do not need additional quota nor expect to receive it, the bonus quota may have little impact on factory management behavior. Some contend that it is the international attention focused on its main industry, rather than the quotas, that prompted the reported improvements in Cambodia's labor situation.

Another criticism of the incentive provision is that it acts in effect like a reverse sanction. Under a regular quota, the exporting country is entitled to ship a set amount of goods to the United States. If the United States believes labor laws in that country are not being enforced, then the United States must prove it in order to take that country's quota away. Under the incentive approach, the presumption is that the exporting country has poor labor standards. In order to receive its bonus quota, the country must prove that presumption wrong. If, in the end, it receives less than the full amount of bonus quota, as the case has been with Cambodia, it has little recourse.

Some opponents of the Cambodia agreement assert that it suffers from a lack of transparent criteria used to measure Cambodia's "substantial compliance."⁴³ While the ILO monitoring program bases its factory inspections on a comprehensive checklist of criteria, the program is still gathering baseline data on most factories and has yet to release a follow-up report that will show whether conditions have improved or worsened. Since 1999, however, the U.S. has awarded bonus quota to Cambodia 3 times for improvements in complying with core labor standards. Some critics question how those determinations were made, since the ILO program did not

⁴⁰ Labor Trends Report 2002, U.S. Embassy in Cambodia.

⁴¹ *Inside US Trade*, "U.S.-Cambodia Textile Deal Leaves Most Trade Unrestrained," January 11, 2002.

⁴² Brenda Jacobs, "The Growing Market for US Investment in Textiles," *Doing Business in Cambodia Today Conference Report*, April 18, 2001.

⁴³ Brenda Jacobs, April 18, 2001.

produce its first report until November 2001, and since information from the semi-annual labor consultations conducted under the textile agreement is not available to the public. On the flip-side, these critics ask whether a monitoring program is necessary at all, if the data used to make the “substantial compliance” determination is available from other sources.

Another view holds that the Cambodia model, whether effective in Cambodia or not, would not have been applicable to the Vietnam context. During testimony before the House Ways and Means Committee on February 26, 2003, U.S. Trade Representative Robert Zoellick explained that the Cambodia model would not be applied to Vietnam because its economy is much more diverse than Cambodia’s, which is dominated by the textile and apparel industry. Therefore, Ambassador Zoellick said, providing incentives for improvements in the textile industry’s working conditions would only meet a portion of the United States’ “broad” labor interests in Vietnam.⁴⁴

Some argue that it would be difficult for Vietnam to comply with the labor standards criteria and difficult for the United States to find Vietnam in “substantial compliance.” The key question is how to deal with the issue of freedom of association, one of the internationally-recognized core labor standards. Although Vietnam, as an ILO member state, is obligated to promote freedom of association, workers in Vietnam are reportedly not accorded that right by the government. According to the State Department, in Vietnam, “workers are not free to join or form unions of their choosing ... Trade unions are controlled by the Party and have only nominal independence ... Individual unions legally are not free to affiliate with, join, or participate in, international labor bodies.”⁴⁵ The argument can be made that, by restricting freedom of association in this way, Vietnam does not comply with international core labor standards. Therefore, some observers believe that Vietnam would be ineligible for any bonus quota under an incentive provision.

Critics of applying the Cambodia-style incentive provision to Vietnam speculated that the only way Vietnam could receive bonus quota would be if the United States, focusing on the term “substantial,” chose to reward Vietnam’s compliance with other labor standards. Alternatively, the United States could have examined other, perhaps more factory-level indicators of freedom of association, such as whether workers are free to join or not join unions, or whether factory unions have the ability to represent workers and negotiate on behalf of workers. Given that the United States has been a strong supporter of labor standards and, as an ILO member state, is obligated to respect all of the core standards, such an approach may have been inconsistent with avowed U.S. policies on labor standards.

Additionally, some questioned whether a textile agreement would press Vietnam to lift its restrictions on freedom of association. Since this would have required the Communist Party to relinquish significant control, the achievement of complete freedom of association over the next few years generally is thought to be highly

⁴⁴ February 26, 2003 Ways & Means Trade Subcommittee Hearing on “The President’s Trade Agenda.”

⁴⁵ U.S. Department of State, Country Reports on Human Rights Practices, Vietnam 2001.

unlikely. However, a strong labor incentive could perhaps influence Vietnam to allow greater freedom for the hundreds of unofficial “labor associations” that exist in Vietnam.

In terms of applying a Cambodia-like monitoring program to Vietnam, some argued that the logistics would be much more complicated and costly. In Cambodia, the garment sector is limited to an estimated 220 factories, located mostly in and around Phnom Penh, that employ 200,000 workers.⁴⁶ In Vietnam, there are over 1,000 textile and apparel enterprises located across the country, with 1.6 million employees. Even if a monitoring program were focused solely on garment factories, since clothing rather than textiles dominates the sector’s exports to the United States, this would still have required substantial financial and manpower resources. If the Cambodia program’s monitoring and reporting schedule had been applied to Vietnam, with a rate of inspection of approximately 100 factories per year, it would have taken several years for a sizeable sample of Vietnamese factories to be evaluated.

The bureaucracy of conducting surprise inspections, critics contend, may also have been cumbersome. Because factories are located across numerous provinces and special investment zones, approval for random inspections would have been needed from the national government, provincial governments, export-processing and industrial zone authorities, national and local unions, national and local industry associations, and the factories themselves. In addition to maintaining a geographic balance among participating factories, a balance would have to have been sought in ensuring that state-owned, domestic private, and foreign-invested enterprises are treated equally. Inspection of the state-owned enterprises, in particular, may have been a politically sensitive issue, especially if the monitoring process finds violations. Moreover, unlike Cambodia, where the independent tripartite social partners — the employer association, unions, and government — ensure the neutrality of the monitoring program by voicing their different interests, Vietnam’s social partners are all linked in varying degrees to the Communist Party. This implies, some argue, that the interests of the government, the entity most closely connected to the Party, will dominate any type of monitoring program.

⁴⁶ Labor Trends Report 2002, U.S. Embassy in Cambodia; Synthesis Reports from the ILO Garment Sector Working Conditions Improvement Project.

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